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Nirav D. Parikh 25-LDP
Owens-Illinois, Inc.
One SeaGate
Toledo, OH 43666

EXAMINER

HYLTON, ROBIN ANNETTE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/994,554
Filing Date: 11/27/01
Appellant(s): BLOOM ET AL.

MAILED
AUG 24 2007
GROUP 3700

Robert Collins
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 29, 2007 appealing from the Office action mailed September 26, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

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(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. 35 USC 112, 1st paragraph, as failing to comply with the written description.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,984,124	TAKANO	01-1999
6,581,793	RACINE et al.	06-2003
6,761,275	McBRIDE et al.	07-2004

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 3-24, 34-46, and 59-65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims set forth the "disk loosely retained parallel to but separate from" the base wall, but provides *no structure* for this to occur. How is the "disk loosely retained parallel to but separate from" the base wall? Although the claims are read in light of the specification, limitations of the specification are not read into the claims.

Claims 3-24, 34-46, and 59-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

The claims set forth the "disk loosely retained parallel to but separate from" the base wall, but provides *no structure* for this occurrence. How is the "disk loosely retained parallel to but separate from" the base wall? Although the claims are read in light of the specification, limitations of the specification are not read into the claims.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claims 3-8, 13-20, 37-42, 59, 60, 64, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takano (US 5,984,124) in view of McBride et al. (US 6,761,275).

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Takano teaches the claimed closure and container except for the resilient liner molded onto the disk **9**. See column 3, lines 19-21 regarding the plastic material. See figure 6 depicting the protrusion **14** extending around a peripheral portion of the flat disk.

McBride teaches it is known to mold a resilient liner **40** onto a disk **30**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a resilient liner molded onto the disk for engaging the mouth of an associated container. Doing so provides a more effective and reliable seal between the closure cap and the container.

Regarding the liner as a barrier layer, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the resilient liner of a barrier material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so maintains the integrity of the container contents against degradation.

It is noted that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate.

Claims 11,12,22-24,45,46 and 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Racine et al (US 6,581,793) in view of McBride.

Racine teaches a closure having a plastic disk **28** having a flat base wall with a depending annular ring **38** and a depending rib (unnumbered) located radially outwardly of the ring. Racine does not teach a resilient liner molded onto the disk.

McBride teaches it is known to mold a resilient liner **40** onto a disk **30**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a resilient liner molded onto the disk for engaging the mouth of an

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associated container. Doing so provides a more effective and reliable seal between the closure cap and the container.

(10) Response to Argument

Appellant argues the claims meet the requirement of 35 USC 112, 1st and 2nd paragraph since the specification provides for a bead extending from the plastic disk toward the base wall of the closure and another bead extending inwardly from the closure shell. This is not persuasive since there is no structure, e.g., a bead, *set forth in the claims* to allow for the plastic disk to be "loosely retained" within the closure. Without any structure *set forth in the claims* for retaining the disk in the closure shell, the claims do not meet the requirements of the statute since it has been held that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The patent to Takano teaches a plastic disk for sealing against the interior of the associated container mouth wall. One of ordinary skill in the art at the time the invention was made looking for a disk which provides a more resilient seal and/or a reduction of content degradation would turn to a known teaching in the prior art. In the instant case, McBride provides this teaching and the motivation to combine the references. At column 3, lines 33-41

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the explicit teaching of maintaining an integral seal between a disk and the interior of the bottle mouth via a resilient seal layer over the disk can be found.

The closed container Takano can be used for holding a number of products. Wherein any of the contained products can release gas-building pressure toward the closure, the resilient seal layer applied to the product-facing side of the disk of Takano as taught by McBride will allow for the seal between the disc and the interior of the container mouth to be maintained since flexure and/or movement to the disk of Takano can and will occur since it is not held tightly against the base wall of the closure shell.

Regarding appellant's remarks that the resilient layer over the disk of Takano is not obvious in view of McBride, it is pointed out that the domed disk of McBride is inherently resilient and flexible. If it were not, it would not be capable of 1) application of the closure to the container mouth and 2) flexure in response to pressure build-up within the sealed container. Thus, appellant's arguments are not persuasive.

Similarly, the patent to Racine teaches in a number of embodiments that the disc seals the interior of the associated container mouth wall (see Figs. 7-11) via an annular ring (38). Contrary to appellant's assertion, the embodiments illustrated in these figures further depict "an annular rib around a radially outer edge of the disk base extending away from said base wall". The annular rib once covered by the resilient liner would engage the liner "against a radially outer edge of a container finish when said closure is secured to the container finish". Thus, the structure meets the claimed invention set forth in claim 62.

Appellant asserts the application of a resilient layer over the resilient disc of Racine would not be obvious to one of ordinary skill in the art. A resilient layer of liner material to provide a number of auxiliary functions such as indicia or barrier protection would be obvious to one of ordinary skill in the art. The liner must also be resilient to maintain the resiliency and flexibility of the disk to maintain the sealability of the closure with respect to the container mouth.

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Regarding appellant's remarks regarding the material recited in claim 19, as pointed out in the final rejection and again herein, appellant failed to traverse the common knowledge or well-known in the art statement set forth in the non-final Office action mailed March 9, 2006. Thus, the statement has been taken to be admitted prior art.

While the patent to McBride does not explicitly teach a barrier resin as recited in claim 19, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the resilient liner of a barrier material for protecting the contents of the container from degradation as is known in the art, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Again, this is taken as admitted prior art since appellant *failed* to traverse this statement in the previous response.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

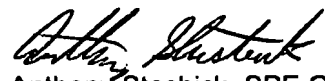


Robin Hylton
Primary Examiner GAU 3781

Conferees:



Marc Jimenez, TC 3700 TQAS



Anthony Stashick, SPE GAU 3781